

REMARKS/ARGUMENTS

Claims 6, 8-17, 21-30 and new claims 31-34 are pending in the application, with claim 21 being withdrawn pursuant to a restriction requirement, and claims 1-5 and 18-20 previously having been cancelled. New claim 31 contains the subject matter of claim 27, but is written in independent form. New claims 32-34 have been added to round out the scope of coverage of the invention. Support for new claim 32 may be found at page 2, line 19 through page 3, line 2 of the specification, and no new matter has been introduced. Support for new claims 33 and 34 may be found at page 9, lines 11-14 of the specification, and no new matter has been introduced. Reconsideration and a withdrawal of the rejections are hereby respectfully requested in view of the above amendments and following remarks.

Claim 27 has been rewritten as new claim 31, including the subject matter of claims 6 and 22, which are the claims from which claim 27 depends. Claim 27 was not rejected over art, but was rejected under section 112, first paragraph, as being indefinite. The Examiner has indicated, on page 4 of the May 4, 2007 Office Action, that a clarifying amendment to the claims would overcome the section 112 rejection. Applicant has amended claim 22 and new claim 31 (claim 27 rewritten independently) to more particularly recite that the invention comprises a food product which is selected from the group consisting of a, b, and c. For these reasons, the section 112 rejection with respect to claim 22 and new claim 31 should be withdrawn. Applicant respectfully requests allowance of new claim 31.

Claim 17 was rejected under 35 U.S.C. 112. Claim 17 has been amended to replace "father" with the word – further – in accordance with the Examiner's suggestion. Reconsideration and a withdrawal of the section 112 rejection with respect to claim 17 is requested.

Claim 28 was rejected based on the reference to "a major amount". Applicant has amended claim 28 to recite that the amount of konjac glucomannan is present in an amount greater than the amount of any sugars and starches in the product. This amendment is believed to be fully supported by the specification and no new matter has been introduced. Claim 28 recites that the konjac is present in an amount greater than the starches and/or sugars. Applicant, in the specification, see e.g., page 10, lines 3-15, recites that these embodiments provide a desirable high protein, low carbohydrate functional-like food. Applicant contrasts this to prior foods where the foods were primarily comprised of sugars and/or starches. Applicant's claimed products are not primarily comprised of starches and/or sugars. Reconsideration and a withdrawal of the rejection with respect to claim 28 is requested.

For the above reasons, and in view of the above amendments, the section 112 rejection of claims 6, 8-17 and 22-30 should be withdrawn. Reconsideration is respectfully requested.

Claims 28, 29 and 30 stand rejected under 35 U.S.C. 112 as lacking compliance with the written description requirement. This rejection is respectfully but strenuously traversed. Claims 28 and 30 were not rejected based on art, but were rejected under section 112, based on the written description

requirement. The Examiner considers that the newly added claims 28, 29 and 30 are deemed to contain subject matter which does not convey to one of skill in the art that the inventor had possession of the invention at the time the application was filed. This rejection is respectfully traversed.

Claim 28 has been amended to recite that the konjac glucomannan is present in the claimed food product in an amount greater than the amount of any starch and sugars in the food product. Support for this claim is contained in the specification, for example, at p.7, lines 14-15, wherein the Applicant states that sugars and/or starches are eliminated. The amount of konjac glucomannan would be greater where the sugars or starches are eliminated. Additional support may be found in the specification, at page 3, line 1-2, wherein Applicant states that

Preferred low carbohydrate embodiments, therefore, as defined herein, contain 5 grams or less net carbohydrate per serving.

Claim 28 is fully supported by the specification and the rejection should be withdrawn.

Claims 29 and 30 recite the features of a starch free product and a sugar free product, respectively. Support for the claimed features of the Applicant's invention, as recited in these claims, is contained in the specification at p. 9, lines 8-16, and p. 10, lines 14-15.

Functional-like, low carbohydrate imitation seafood with mechanical features and improved textures and flavor in accordance with the invention is prepared using an embodiment of the foregoing admixture of konjac glucomannan.

Fish proteins, (e.g., surimi) is used in combination with the foregoing admixture of konjac and binding agent (e.g., tetrasodium pyrophosphate, edible glues, including milk based protein glues, etc.) to provide an edible substance. Various desired flavors are

added as well. For example, imitation crab embodiments, (e.g., lobster, scallops, shrimp, etc.) may be provided as well. (Specification, page 9, lines 8-16.)

* * *

With the *preferred seafood embodiments, however, the sugars and/or starches are eliminated* which provides desirably low carbohydrate embodiments. (Specification, page 10, line 14-15.)

Applicant's specification clearly discloses that the inventor of the presently claimed invention had possession of the subject matter claimed, as the matter is disclosed and referenced in the specification. Applicant, for the Examiner's reference, has cited to the specification by page and line number, above.

Applicant, on page 9, lines 11-16, and page 10 lines 10-15, discloses examples of food products wherein Applicant discloses that there are components of the food product, but not starch and/or sugar. Accordingly, for these reasons, claims 29 and 30 are fully supported, and the specification contains the description sufficient to show that the claimed invention was in the possession of the inventor at the time the application was filed. For these reasons, reconsideration and a withdrawal of the section 112 rejection with respect to claims 28, 29 and 30, is respectfully requested.

Claims 23, 24 and 26 stand rejected over 35 U.S.C. 112, first paragraph, because the Examiner contends that the specification, though enabling for soluble fiber, is not enabling for insoluble fiber. Applicant respectfully traverses this rejection.

The Examiner considers the specification not to be enabling for the insoluble fiber claimed. Specifically, the Examiner states that "the Examiner cannot find basis for the inclusion of insoluble fiber in the specification as originally filed." Applicant's specification refers to the insoluble fiber as a component of the invention. Applicant's specification discusses using insoluble fiber as well as water soluble fiber. Specifically, at p. 2, lines 14-16, Applicant recites:

Those embodiments with carbohydrates may supply those carbohydrates as a water soluble or *insoluble fiber* or other form which has minimal effect on elevating blood sugar.

and again, at p. 3, lines 9-11, Applicant recites:

Additionally, in certain embodiments, water soluble or *insoluble high fiber flours or other substrates* may be incorporated in various ingredients (e.g., konjac glucomannan), which may minimally elevate blood sugar.

The specification further refers to "bulking agents as known in the art, e.g., cellulose . . ." (Specification, p. 4, line 12.) Accordingly, even another reference to insoluble fiber, namely cellulose, is contained in the specification. Applicant has amended claim 24 to recite that the insoluble fiber comprises cellulose.

Clearly, based on the Applicant's description in the specification, one of ordinary skill in the art would understand that the Applicant may use insoluble fiber in the claimed embodiments. Accordingly, for these reasons, Applicant's invention, as recited in claims 23, 24 and 26, should overcome the section 112 rejection, and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

Claims 6, 8-17 and 22-25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Aurio (US 2006/0099324) in view of Tye (5,308,636). This rejection is respectfully but strenuously traversed, and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

Applicant notes the Examiner's reliance on, and reference to, Aurio paragraph [0085] for a disclosure which the Examiner considers to be Aurio combining a viscous soluble fiber with a viscosity-lowering protein in water, further asserting that the water may be a boiling medium.

However, in Aurio, what is disclosed are ingredients in dry form being added as a dry blend. That dry blend is described as one embodiment, where the dry blend is not boiled, but rather is mixed into cold water at 5 to 35 degrees C. That would not teach the Applicant's claimed invention. According to the Applicant's invention, the admixture of konjac glucomannan and animal based protein concentrate referred to in claim 22, has been heated to above 100 degrees Celsius. This is not disclosed in the Example provided in paragraph [0085] of Aurio.

The Examiner considers that Aurio discloses "boiling aqueous medium" which the Examiner points out may be water. However, this does not provide a teaching of boiling the admixture of konjac and animal based protein and using that admixture to form a food product. Rather, the Aurio embodiment discussed at [0085] contemplates mixing "the ingredients of the compositions of the invention" in dry form and dispersing the dry blend into an aqueous medium.

Turning to Applicant's claim 13, a binder and flavoring are also claimed components. Aurio fails to suggest or disclose the Applicant's claimed invention recited in claim 13. If Aurio were followed, (assuming for argument's sake that Aurio even disclosed the components recited in claim 13, which it does not appear to do), according to [0085] of Aurio, the dry components would be mixed together. Considering the Examiner cites Aurio for its teaching of placing the "dry blend" into aqueous medium (which may be boiling water), the claimed invention recited in claim 13 is not disclosed or suggested. In fact, Aurio teaches away from the Applicant's claimed invention, as it teaches to place the "dry blend [of the ingredients]" into the boiling water, whereas, unlike Aurio, in the Applicant's invention, the konjac glucomannan and animal based protein concentrate are heated to above 100 degrees Celsius, and the heated *admixture* is therefore a *component* of the claimed imitation seafood product. The Applicant's invention, as recited in claim 13, is not obvious in view of Aurio and Tye.

The Examiner appears to acknowledge that Applicant has distinguished Tye on the basis of what is disclosed in Applicant's specification, namely, that Applicant's claimed product provides a starch-free food product, whereas, Tye utilizes potato starch. Applicant has added claim 33 to recite that the said binding agents consist of one or more compounds which do not comprise starch; and, in claim 34, that the said binding agents are selected from the group consisting of phosphate containing compounds and protein-based glues. The non-starch components are recited in the Applicant's specification, and no new matter has

been introduced. Accordingly, for these reasons, claims 33 and 34 distinguish the invention over the cited art.

Applicant believes that the claims appropriately distinguish the invention over the cited references. Applicant has amended claim 22 to recite that the admixture has been heated to above 100 degrees Celsius in order to provide an improved texture for facilitating use of said admixture in said food product. This Amendment is supported by the specification, at p. 6, line 21- p. 7, line 2, and no new matter has been introduced. Applicant's invention provides a food product of which the claimed admixture having improved texture is used.

In addition, claim 13 of Applicant's invention recites a food product selected from imitation seafood comprising konjac glucomannan, animal based protein concentrate, predetermined seafood flavoring, and one or more binding agents. The cited references do not appear to disclose the invention, as claimed.

Claims 6, 8-15, 17, 22, 26 and 29 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tye. Applicant respectfully traverses the rejection for the same reasons as those set forth above.

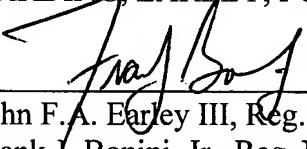
For the reasons set forth above, Applicant submits that the present claims, as currently amended, recite non-obvious embodiments of the invention which are not taught, suggested or disclosed by the references cited and relied upon by the Examiner. Reconsideration and a withdrawal of all outstanding rejections is hereby respectfully requested.

If matters relating to the claim language remain, the Examiner is invited to telephone the Applicant's undersigned representative to resolve them.

If necessary, an appropriate extension of time to respond is respectfully requested.

The Commissioner is authorized to charge any additional fees which may be required to Patent Office Deposit Account No. 05-0208.

Respectfully submitted,
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